

*Excerpts from Justice Blackmun's Comments  
at the 1990 Judicial Conference*

[I]t has been thirty years since I have had the privilege of being on the federal bench, and twenty years since I have been in Washington. It seems like yesterday since that happened. Two years ago at New Year's Mrs. Blackmun and I accepted an invitation to go to Hilton Head, South Carolina, for what was called a Renaissance weekend. . . .

. . . . The designated subject, I was told when I arrived, was, "What I have learned." Well, at first I thought it had to do with the seminar sessions and hence I had better go to every seminar I could. It is like a three-ring circus; there are always three or four going on at the same time. Then I realized that it related to life's experiences themselves. What have I learned? . . . .

I think I have learned something about our country. It is richly endowed. It has its beauty. It has its shame. Its people are mixed and constantly changing. It is subject to pressures from and from within. And yet it has existed as a very special nation for over two hundred years under a blueprint for government we call the Constitution, and under a Bill of Rights and additional amendments. We hope that it may continue to operate under them for some time to come. We know there are two political branches, the Executive and the Congress, and on the other hand, the Judiciary. The doctrine of separation of power seems generally to work for us.

Let me speak in a more intimate vein as to what I think I have learned. . . . First is the need for intellectual refreshment.

. . . .

The second is the need for a sense of individuality and individual importance and of obligation. . . . Each of us has a place in this world, and each of us has the opportunity to accomplish, to contribute, and to afford a measure of happiness to others. And yet, in a distinct sense, it could be said that we are not important at all. Here we are, as I said the other night, living in the United States in the closing years of the twentieth century, struggling, to be sure, with problems and with inequities and nevertheless enjoying our places as beneficiaries of what others have produced for us: the founding fathers, inventors, musicians, scholars, parents, associates, and complete strangers. Each generation is but one in a long line stretching far back in history, and how indebted we are to those who have gone before us.

Third, I think, is the need to realize that law and morality are not necessarily the same. Surely our law ought to be, and I sincerely hope that it is, based on moral principle, but some things that are legal are not necessarily moral.

The fourth is an open mind. On most major issues in the law, particularly in constitutional law, there are two sides to the case.

The fifth is to accept our diversity. This country proudly has regarded itself as a melting pot. Although it has not always welcomed new persons to that pot, we are a nation of Jews and Catholics and Protestants and Blacks and Whites and Asians and all the rest, but Kahlil Gibran reminds us, and I quote, "The pillars of the temple stand apart and yet they all support the temple." There has been strength in our diversity.

The sixth is patience. Rome, indeed, was not built in a day. In the development of the law, we usually move one step at a time. The frontier is pushed back gradually.

Next is not taking one's self too seriously and maintaining a sense of humor.

Next is truth. On the pedestals that flank the impressive west stairs of the Supreme Court Building in Washington are two statues by the noted sculptor, James Earle Fraser. Another Fraser statue is in Rochester, Minnesota, from which we came. It depicts the Mayo brothers in their surgical gowns, but what struck me most always about that statue is its inscription below it. It is this: "They loved the truth and sought to know it."

What is truth? In science and in medicine one has, I suppose, a fair idea of what truth is. It perhaps is the ultimate factual answer. But in life generally and in the law in particular, what is it? I like to think, perhaps simplistically, that in this context truth, at the very least, is justice, and specifically, is that equal justice we profess.

The next is accepting the inevitable. Some years ago a great surgeon on his seventieth birthday was honored by the American College of Surgeons. In his response, he said this: As I have watched older men coming down the ladder, as down they must come, with younger men passing them, as they must pass to go up, it so often has been an unhappy time for both. The older man is not always able to see the necessity or perhaps the justice of his descent and resents his slipping from the position he has held instead of gently and peacefully helping the passing by assisting the younger man." What pleasure and comfort I have had from my hours with younger men. They still have their imagination, their vision, and the future is bright before them.

The next is courage. . . . Public opinion and popularity change, principle seldom does; and if it does, it changes slowly. Courage in decision making is necessary.

The next is recognizing and accepting one's fallibility.

The next is a proper perspective. The story is told about Marian Anderson . . . . An incident from her life shows the depth and purity of her character. . . . [R]eporters were interviewing Ms.

Anderson. They asked her to name the greatest moment in her life. . . . There was the night when Toscanini told her that hers was the finest voice of the century. There was the private concert she gave at the White House for the Roosevelts and the King and Queen of England. . . . [T]here was the Easter Sunday in Washington when she stood beneath the Lincoln statue and sang for a crowd of 75,000 people. Which of these moments did Marian choose. . . . None of them . . . . Ms. Anderson told the reporters that the greatest moment of her life was the day she went home and told her mother she wouldn't have to take in washing anymore.

The next is respect for the environment. Over fifty years ago when I returned from law school to the Twin Cities, I was fortunate . . . to meet two young men who proved to be the best canoeists I've ever known. They asked me to join them on their annual trek into the canoe country of western Ontario . . . . [We] moved northeastward into the so-called Manitou country, and eventually cross[ed] the Continental Divide, [found] the headwaters of the Turtle River, and [came] down that very attractive stream back into Red Gut Bay of Rainy Lake. The trip is about 250 miles and took between two and three weeks, depending on the weather. We never saw anyone, anyone at all, other than a lone Native American. Animal life was plentiful, fishing was there for our needs, beauty, quiet, the earth at its full, pure water, sunshine, rain, cold, misery when we were windbound, but it was a time close to nature and close to each other.

[I]t was this, I think, that made me appreciate something that Justice William O. Douglas wrote. Douglas, as you know, is a controversial character. Some of you are critical of him; others will praise him. We have a custom at the Court that when a Justice retires, his colleagues write him a letter of farewell, and then they purchase his bench chair from the government and present it to him. This was done when Douglas, ill and broken, retired in 1975, and his response to the Court's letter is Douglas at its best in my view. I read most of it. "I am reminded of many canoe trips I have taken in my lifetime. Those who start down a water course may be strangers at the beginning, but almost invariably are close friends in the end. There were strong head winds to overcome; there were many rainy days as well as sun-drenched days to travel. The portages were long and many and some were very strenuous, but there was always a pleasant camp and the stand of white bark birch, and water concerts held at night to the music of the loons, and inevitably there came the last campfire, the last breakfast cooked over last night's fire, and the parting was always sad. And yet, in fact, there was no parting because each happy memory of the choice parts of the journey, and of the whole journey, was a harmonious, united effort filled with fulfilling and beautiful hours as well as dull and dreary ones. The greatest such journey I have made has been with you, my brethren, who were strangers at the start but warm and fast friends at the end."

The next is clarity. . . . [Justice Cardozo said in 1921 at Yale Law School:] "The great generalities of the Constitution have a content and a significance that vary from age to age. Interpretation becomes more than the ascertainment of meaning and intent of lawmakers whose collective will has been declared. The work of a judge is in one sense enduring and in another, ephemeral. What is good in it, endures; what is erroneous is pretty sure to perish. In the endless

process of testing and retesting, there is a constant rejection of the dross and a constant retention of whatever is pure and sound and fine."

The next is faith. In an address at Princeton not too long ago, this was said: "What a man knows at fifty that he did not know at twenty boils down to something like this. The knowledge that he has acquired with age is not the knowledge of formulas or forms of words, but of people and places and actions. A knowledge not gained by words, but by touch, sight, sound, victories, failures, sleeplessness, devotion, love, the human experiences, and emotions of this earth, and perhaps, too, a little faith and a little reverence for the things you cannot see."

The next is a sense of urgency. These words have been attributed to different persons. I like their attribution to William Penn . . . . "I expect to pass through life but once and if, therefore, there be any kindness I can show or any good thing I can do to my fellow being, let me do it now and not defer or neglect it as I shall not pass this way again."

. . . .

The next is dreaming a little, remembering our values, those that brought us to where we are and here to this place today.

Let me close by waving the flag a little bit. . . . We have in this country a little document called the Constitution of the United States. It is brief and to the point and imperfect. I have a copy over there somewhere, maybe it is here. That copy consists only of thirty pages. It was given to me by Hugo Black; he gave me three copies, actually. I wore one out; I lost another or somebody swiped it, and this one has to hold out. Eighteen pages are the original document, and of those, one and a half pages are signatures. The remaining pages are the amendments. It has been with us for two centuries now. It bends but it has not broken. It is flexible, thanks to the wisdom of the drafters. And yet beyond this, there is what Professor Walter F. Murphy of Princeton University has called the "larger Constitution." He defines this as the basic document, plus the amendments, plus judicial interpretation, plus the second paragraph of the Declaration of Independence.

Philosopher Mortimer Adler has put it in a slightly different way. He has said that the the American testament consists of the Declaration, the Preamble to the Constitution, and the Gettysburg Address. [I]f I had been asked, I might have added the second inaugural of 1865. But let me, however, read a few sentences from two of these documents. You know them; most of you probably know the sentences by heart. The first: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." Fifty-six significant words. The second: "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic Tranquility, provide for the common defense, promote the

general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.” Fifty-two significant words. The two together, 108 words. Nothing more really needs to be said. That's what it is all about or should be in this country.

We are all in this together, practicing lawyers, professors, those on the state bench, those on the federal bench. How vulnerable generally we all are. How much we need each other as we move along through the years allotted to us, under what has been so repeatedly referred to as the rule of law. I think it comes down to what we really believe. If we have belief, action is up to us.